XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35)

आदेश पत्रक

मामला क्रमांक Cr-A No. 1070/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J

APPELLANT Harawati, aged 30 years w/o Ganpati, Caste-Harijan (Mahara), resident of village Borgaon, P.S. Korega, Distt. Navarangpur (Orissa)

Vs.

RESPONDENT State of Chhattisgarh, through P.S. Civil Line, Bilaspur District Bilaspur (C.G.)

10-8-2007

Ku. Sofia Khan, Advocate for the appellant.

Shri Arun Sao, Addl. Public Prosecutor with Shri Sandeep Yadav, Dy. Govt. Adv. for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 30th October, 2004 passed in Special Criminal Case No. 24/2003 whereby learned Special Judge (Narcotics), Bilaspur has convicted the appellant for offence under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short hereinafter referred to as the Act) and sentenced her to undergo R.I. for 4 years, to pay a fine of Rs. 5000/- and in default of payment of fine, to further undergo additional R.I. for six months.

3. The case of the prosecution is that Sub Inspector Jerome Lakda (P.W. 4) of Police Station Civil Lines, Bilaspur was on patrolling duty on 10-9-2003 along with Sub Inspector Chandel, Head Constable Domnik Lakda and Daya Jaswani and other staff in

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

a mobile van, in the city of Bilaspur when they saw two women standing in suspicious condition. On suspicion, one woman was interrogated whereupon she informed her name to be Harawati, wife of Ganpati, aged 30 years, resident of Borgaon, P.S. Kodega (Orissa). She also stated that she is having illicit Ganja and she was going to village Khamharia for the purpose of selling the same. After obtaining the consent of the appellant for search, search was affected by Head Constable Dayawati Jaswani, and cannabis was found from her possession in two bags each containing 7.500 and 1.500 k.g. thus total 9 kg. of Ganja worth to Rs. 13,500/- was seized. Recovery memo was prepared. Information about the recovery was sent to the Superintendent of Police through Ganesh Sharma. Samples of 100 gm from both the bags were taken and the Ganja was taken into possession. The seized contraband was taken to police station and handed over to Head Constable Moharrir for security. The appellant was taken into custody. Information of her arrest was sent to her family members. After completing investigation, charge sheet was filed against the appellant. During trial the prosecution examined 7 witnesses. Statement of the appellant was recorded under Section 313 of Cr.P.C. in which she has denied the circumstances appearing against her and has taken a defence that she could not purchase ticket, therefore, she has been falsely implicated.

4. Learned counsel for the appellant submits that according to the case of the prosecution, the I.O. affected search through Head

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(37)

आदेश पत्रक

मामला क्रमांक Cr.A.No. 1070/04 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Constable Dayawati Jaswani however she has not been examined nor her signature is there in the Talashi Panchnama and thus there is complete non-compliance of Section 42 (1) of the Act. She further argued that before affecting personal search, mandatory provisions of Section 50 of the Act have not been followed as the appellant was not given option of being searched by a Magistrate or Gazetted Officer as is evident from the statement of P.W. 4 Jerome Lakra who has admitted this in his statement before the Court. It was also contended that version of the Investigation Officer is not corroborated by the statement of Panch witness P.W. 5 Shiromani in whose presence it is alleged that the search was made. However, this witness has stated that two women were detained near Mangla squire and on checking it was found that they were carrying Ganja, thereafter they were taken to the police station and the documents from Ex. P-5 to P-12 bear his signature and he had signed all the papers in the police station. This witness could not recognize the appellant in the Court whether she is the woman who was detained in the police station.

5. On the other hand, learned counsel appearing for the State has supported the impugned judgment and argued that the search was affected in a public place i.e. Mangla squire therefore, the question of compliance of Section 42(1) of the Act does not arise. He further submits that the provisions of Section 50 of the Act are applicable only in the circumstances where the personal search of the accused

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

38

आदेश पत्रक

मामला क्रमांक Cr. A. No. 1070/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित ५	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

is affected, however in the instant case, the contrabands were kept by the accused in two bags and no personal search of the accused has been affected, therefore, the question of apprising the appellant as per Section 50 of the Act that she had an option to be searched in the presence of Gazetted officer or before a Magistrate does not arise. The Investigating Officer has detailed the steps taken by him at the time of affecting search of the appellant and seizure of Ganja and the same have been done after following the procedure prescribed under the Act. In cross-examination of this witness, the defence has not been able to elicit any circumstance which may show that this witness has acted with malafide in affecting the search and seizure from the appellant. The Panch witness Shiromani (P.W. 5) has not disputed his signature in the recovery memo, seizure memo and other documents Ex. P-5 to P-12. He has also deposed that the contraband was seized from two ladies who were standing near Mangla Chowk and who were taken to Police Station from there, thus to a certain extent, the statement of Investigating Officer also finds corroboration from the statement of P.W. 5 Shiromani.

6. I have heard the learned counsel for the parties.

7. The conviction of the appellant is based on statement of the Investigating Officer (P.W. 4) Jerome Lakra. The trial Court has also relied upon the statement of P.W. 5 Panch witness Shiromani for reaching to the conclusion that the appellant was the same lady who

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(39)

आदेश पत्रक

मामला क्रमांक Cr.A.No. 1070/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was apprehended by the police in Mangla squire from whose custody the contraband was seized.

8. Jerome Lakra, the I.O. (P.W. 4) has stated that he was on patrolling duty with the Sub Inspector Chandel, Head Constable Lakra, R. Ganesh, Constable Daya Jaswani and R.R. Virendra when they saw two women standing in suspicious condition in Mangla Chowk. On interrogation, they admitted that they are having contraband in their custody. The report was given to the Superintendent of Police vide Ex. P-3 and the lady who is present in the Court is the same lady who had given consent for her search vide Ex. P-5. After her search, 9 kg of cannabis was found in two bags. The seized contraband was physically checked and the same was confirmed as Ganja vide Ex. P-7. On weighing, 9 kg of contraband was found. The seized contraband was given to the Head Constable for being placed in the Malkhana in save custody. The samples of the contraband were sent to F.S.L. Raipur for examination and on examination, the same were found to be Ganja vide document of Ex. P-13. This witness has denied that the appellant was not apprised about her right to be searched by a gazetted officer or in presence of any Magistrate. However he has admitted that this information was not given in writing as this fact has been mentioned in the consent obtained from the appellant. The version of the I.O. finds corroboration from P.W. 7 V.S. Chandel who was accompanying the Investigating Officer. The independent witness P.W. 5 Shiromani has

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(40)

आदेश पत्रक

मामला क्रमांक Cr.A-No. 1070/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	6	

also admitted his signature in the documents of Ex. P-5 to P-12 and has also stated that at the relevant time, the police seized 17-18 kg of cannabis from the custody of two women. However he expressed his inability to identify the appellant as the same woman who was present in the Mangla Chowk. It is true that there are certain short comings present in the investigation however, the short comings pointed out by the learned counsel for the appellant are not of such a nature on the basis of which the case of the prosecution can be thrown away. There is no defence taken by the appellant that the Investigating Officer Jerome Lakra (P.W. 4) or any member of the patrolling party nurtured any ill will against the accused and on account of that, they implicated the appellant in a false case and in the absence of any evidence in this regard, the statement of I.O. with respect to search and seizure of the appellant inspire confidence. The conviction can be based only on the basis of the statement of the Investigating Officer. Where the seizure is affected in the public place in presence of the Panch witnesses, question of compliance of the safe guards as prescribed under Section 50 of the Act does not arise and in the instance case, evidence given by the Investigating Officer inspires confidence. He has substantially complied with the procedure prescribed under the Act regarding search and seizure and his statement is also corroborated to such extent by the statement of Panch witness Shiromani as also from the statement of P.W. 7 Chandel. Therefore, the finding of the trial Court that the

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(41)

आदेश पत्रक

मामला क्रमांक Cr.A.No. 1070/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	.7	

prosecution has proved the case against the appellant regarding her involvement in the offence under Section 20(b)(ii)(B) of the Act is just and proper and the same does not call for any interference.

9. In the result, conviction of the appellant under Section 20(b)(ii)(B) of the Act is maintained. However, taking into consideration that the appellant is first offender and it is admitted by the learned counsel for the appellant that she has not been convicted or prosecuted in the offence under the Act and also considering that she is in custody since 10th September, 2003, the sentence imposed upon her is modified and in place of jail sentence of 4 years and fine of Rs. 5000/-, she is sentenced to the period already undergone by her.

10. The appeal is accordingly partly allowed.

Sd/-
Dhirendra Mishra
Judge

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[पीछे देखिये